

**REMARKS*****Summary of the Amendment***

Upon entry and consideration of the present amendment, claims 1, 19 and 20 will have been amended. Accordingly, claims 1 – 35 remain pending.

***Summary of the Official Action***

In the instant Office Action, the Examiner has objected to claim 19 and rejected claims 1 – 35 over the art of record. By the present amendment and remarks, Applicants submit that the objections and rejections have been overcome, and respectfully request reconsideration of the outstanding Office Action and allowance of the present application.

***Objection to Claims is Moot***

Applicants submit, as claim 19 has been amended to better recite the structural aspects of the invention, the objection claim 19 is moot and should be withdrawn.

Accordingly, reconsideration and withdrawal of this objection is requested.

***Traversal of Rejection Under 35 U.S.C. § 102(b)***

Applicants traverse the rejection of claims 1, 3, 9, 11, 20, 22, 25, 32, and 33 under 35 U.S.C. § 102(b) as being anticipated by HEITMANN (U.S. Patent No. 5,009,238). The Examiner asserts HEITMANN shows all of the noted claims. Applicants traverse the Examiner's assertions.

Applicants' independent claim 1 recites, *inter alia*, a store for receiving the product stream, an accumulating shaft, a conveying element arranged between said store and said accumulating shaft for transporting the product stream from said store to said accumulating shaft, and at least one external delivery device for delivery of at least one additional component, wherein said at least one external delivery device is arranged between said store and said sifter

relative to a transport direction of the product stream. Further, Applicants' independent claim 20 recites, *inter alia*, storing the product stream *in a store*, transporting the product stream from the store to one of an accumulating shaft and a sifter *via a conveying element arranged between the store and the accumulating shaft*, and mixing the product stream with at least one further component within the distributor device *after the store* relative to a transport direction of the product stream. Applicants submit HEITMANN fails to disclose at least the above-noted features of the invention.

Applicants submit the Examiner has not identified any structure in HEITMANN corresponding to the store in Applicants' independent claim 1, nor has the Examiner identified any manner or procedure occurring in HEITMANN corresponding to storing a product stream in a store, as recited in Applicants' independent claim 20. As at least the above-noted feature of Applicants' claims is lacking in HEITMANN, Applicants submit the instant rejection is improper and should be withdrawn.

In addition to its failure to disclose the recited store, Applicants note HEITMANN also fails to even arguably disclose the conveying element, as recited in at least independent claim 1. As the Examiner asserts column 5, lines 35 – 55 of HEITMANN discloses the recited conveying element, it appears the Examiner is referring to elements 48/49 in HEITMANN's Figure 1. Applicants submit a review of HEITMANN reveals element 48 is a nozzle and element 49 is a plenum chamber, and that these elements, alone or together, fail to anticipate the recited conveying element.

In this regard, as the Examiner has identified an accumulating shaft 16 in HEITMANN upstream of the purported conveying elements 48/49, and has not identified a store downstream of conveying elements 48/49, the Examiner has not identified a conveying element in the art of

record to anticipate Applicants' conveying element *arranged between said store and said accumulating shaft*, as recited in at least independent claim 1. Moreover, HEITMANN further fails to show element 48/49, identified to correspond to the recited conveying device, transporting the product stream *from said store to said accumulating shaft*, particularly since, as noted above, the accumulator is upstream of the identified conveying element relative to the tobacco flow direction.

Similar to the defects of HEITMANN related to the conveying device of independent claim 1, Applicants submit HEITMANN likewise fails to disclose any features of a method in which there is a mixing of the product stream with at least one further component *after* the store *relative to the conveying device*. Thus, Applicants reiterate the Examiner has not identified a store, *per se*, in HEITMANN, nor is there any arguable disclosure of mixing *after* elements 48/49 identified by the Examiner has the conveying device, as recited in at least independent claim 20.

Further, Applicants note HEITMANN discloses a main delivery means (83, 84) and one *internal* delivery means (76). While an external product stream is delivered to the HEITMANN apparatus via the main delivery means, the internal delivery means receives surplus from the trimming or equalizing devices within the HEITMANN apparatus. Thus, Applicants submit HEITMANN additionally fails to disclose *at least one external delivery device* for delivery of at least one *additional* component, as recited in at least independent claim 1. More particularly, Applicants submit, as HEITMANN provides a main delivery supplied through an external device and another delivery supplied through an internal device, this document cannot anticipate the invention recited in at least independent claim 1.

As HEITMANN fails to disclose at least the above-noted features of Applicants' independent claims 1 and 20, Applicants submit the applied art fails to show each and every

recited feature of the invention. Thus, Applicants submit the Examiner has failed to provide an adequate evidentiary basis to support an anticipation rejection under 35 U.S.C. § 102(b) and the rejection must be withdrawn.

Further, Applicants submit claims 3, 9, 11, 22, 25, 32, and 33 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. In particular, Applicants submit HEITMANN fails to disclose each and every recited feature of the claims 3, 9, 11, 22, 25, 32, and 33, and, therefore, fails to anticipate invention.

Accordingly, Applicants request the Examiner reconsider and withdraw the rejection of claims 1, 3, 9, 11, 20, 22, 25, 32, and 33 under 35 U.S.C. § 102(b), and indicate these claims are allowable in the next official communication.

***Traversal of Rejection Under 35 U.S.C. § 103(a)***

***1. Over Heitmann in view of Barkmann***

Applicants traverse the rejection of claims 1, 2, 4 – 19, and 21 under 35 U.S.C. § 103(a) as being unpatentable over HEITMANN in view of BARKMANN et al. (U.S. Patent Application Publication No. 2001/0017370) [hereinafter “BARKMANN”]. The Examiner asserts BARKMANN discloses a device similar to that described by HEITMANN, however, the BARKMANN device utilizes a different arrangement of elements. The Examiner therefore asserts it would have been obvious to modify HEITMANN to sift prior to the accumulator, as taught by BARKMANN. Applicants traverse the Examiner’s assertions.

Applicants submit, notwithstanding when sifting occurs within the HEITMANN apparatus, HEITMANN fails to disclose or teach a conveying element *arranged between said store and said accumulating shaft* for transporting the product stream from said store to said

accumulating shaft, as recited in at least independent claim 1 or 20 (in terms of independent claim 1), and *at least one external delivery device* for delivery of at least one *additional* component, as recited in at least independent claim 1.

Applicants further note BARKMANN fails to disclose or suggest the subject matter noted above as deficient in HEITMANN. While acknowledging BARKMANN's general statement regarding sifting, Applicants submit BARKMANN fails to provide any specific disclosure of processes upstream of the accumulator device. In view of this limited disclosure, Applicants submit BARKMANN, like HEITMANN, fails to disclose or teach a conveying element *arranged between said store and said accumulating shaft* for transporting the product stream from said store to said accumulating shaft, as recited in at least independent claim 1 or 20 (in terms of independent claim 1), and *at least one external delivery device* for delivery of at least one *additional* component, as recited in at least independent claim 1.

In a similar manner, as BARKMANN is not related to the portion of the machine upstream of the accumulator shaft, i.e., relative to the tobacco flow direction, Applicants submit this document, like HEITMANN, fails to provide any arguable teaching or disclosure related to an external delivery device of at least one additional component, as recited in at least independent claim 1.

As neither applied document arguable teaches or discloses the above-noted features of at least independent claim 1 or 20, Applicants submit no proper combination of these documents can arguably render unpatentable the invention recited in at least independent claim 1 or 20. Accordingly, Applicants submit this rejection is improper and should be withdrawn.

Further, Applicants submit claims 2, 4 – 19, and 21 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional

features that further define the present invention. In particular, Applicants submit no proper combination of HEITMANN in view of BARKMANN can render unpatentable the combination of features recited in claims 2, 4 – 19, and 21, and, therefore, fails to render obvious the combination of features recited in the pending claims.

Accordingly, Applicants request the Examiner reconsider and withdraw the rejection of claims 1, 2, 4 – 19, and 21 under 35 U.S.C. § 103(a), and indicate these claims are allowable in the next official communication.

2. Over Heitmann

Applicants traverse the rejection of claims 23, 24, 26 – 31, 34, and 35 under 35 U.S.C. § 103(a) as being unpatentable over HEITMANN. The Examiner asserts it would have been obvious to modify HEITMANN to add a further component immediately prior to sifting. Applicants traverse the Examiner's assertions.

While the Examiner has asserted it would have been obvious to modify HEITMANN to add a further component immediately prior to sifting, Applicants note the Examiner's assertions are not based upon any identifiable teaching disclosed or suggested in the applied art of record. As the Examiner has not identified any articulable rationale disclosed in the art of record, Applicants submit the Examiner's assertions are merely conclusory statements insufficient to support a rejection under 35 U.S.C. § 103(a).

Applicants further submit, while the Examiner has expressed reasons for purportedly modifying HEITMANN, these reasons cannot be found or gleaned through reviewing the applied art of record. In fact, the only reasonable rationale for modifying HEITMANN in the manner asserted by the Examiner is found in Applicants' own disclosure, which is an impermissible use of hindsight that cannot support a rejection under 35 U.S.C. § 103(a).

Moreover, while asserting the combination of features recited in Applicants' claims would have been an obvious modification of HEITMANN, Applicants submit the Examiner has not identified any arguable manner in which a further component could be added before sifting, as sifting by HEITMANN occurs after the accumulator shaft, and, therefore, remote from any supply materials. In fact, Applicants note HEITMANN does not even arguably disclose the addition of further components, such that this document cannot even arguably suggest the modification asserted by the Examiner in the rejection.

Further, Applicants submit claims 23, 24, 26 – 31, 34, and 35 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. In particular, Applicants submit no proper modification of HEITMANN can render unpatentable the combination of features recited in claims 23, 24, 26 – 31, 34, and 35, and, therefore, fails to render obvious the combination of features recited in the pending claims.

Accordingly, Applicants request the Examiner reconsider and withdraw the rejection of claims 23, 24, 26 – 31, 34, and 35 under 35 U.S.C. § 103(a), and indicate these claims are allowable in the next official communication.

***Application is Allowable***

Thus, Applicants respectfully submit that each and every pending claim of the present invention meets the requirements for patentability under 35 U.S.C. §§ 102 and 103, and respectfully request the Examiner to indicate allowance of each and every pending claim of the present invention.

***Authorization to Charge Deposit Account***

The undersigned authorizes the charging of any necessary fees, including any extensions

of time fees required to place the application in condition for allowance by Examiner's Amendment, to Deposit Account No. 19 - 0089 in order to maintain pendency of this application.

**CONCLUSION**

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicants' invention, as recited in each of claims 1 - 35. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

Respectfully submitted,  
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June 20, 2007  
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